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SENATE COMMITTEE REPORT

FURTHER

3/7/89

DATE TURNED INTO OFFICE 3/10/89

Mr. President:

FINANCE

Committee considered

SB 166

conformance between actual payments and approved payment rates to health facilities for medical care under certain state medical assistance programs; efd and recommended

[] replace with _____ CS _____) [x] same title
[x] or adopt _____ CS SB 166 (Hess)) [] new title
[] attached amendment(s) and [] technical title change (HB only)
[] _____ letter of intent adopted

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

FISCAL NOTE(S) [] zero [] fiscal impact [] appropriation no FN
[] new [] updated [] previous
[x] same as previous fiscal note(s) published 3/7/89

DHSS 250.0 (FY89)

MEMBERS SIGNING DO PASS

[Signature] Demcak
[Signature] Pearce
[Signature] Fischer

OTHER RECOMMENDATIONS

[Signature] No Rec Frank

[Signature] ^{creeping} (DO PASS)
Chairman signature and recommendation
[Signature] Eo-Cutler
Binkley Piro Roz

[] Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to Medicaid Facility
Payment
 Sponsor: Senate HESS
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Medical Assistance
 Components: Medical Facilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	250.0					
MISCELLANEOUS						
TOTAL OPERATING	250.0	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	125.0					
FEDERAL FUNDS	125.0					
OTHER						
TOTAL	250.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Fiscal impact is calculated based on impact to one identified facility.

Prepared by: ^{FBI} Kim Busch, Director *Kim Busch* Phone: 465-5355
 Division: Medical Assistance Date: 3/6/89

Approved by Commissioner: *Mary M. Munson* Date: 3/6/89
 Agency: Health and Social Services

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 166 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to conformance between actual pay-
7 ments and approved payment rates to health facilities
8 for medical care under certain state medical assis-
9 tance programs; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 47.07.070 is amended by adding a new subsection to
12 read:

13 (e) When an actual rate paid by the department is reviewed at
14 the end of the year for which the approved rate was established and
15 the review is conducted to determine whether the actual rate paid was
16 in conformance with the approved rate under this section, all or part
17 of an adjustment for year-end conformance may be waived for the facil-
18 ity if the facility provides proof of manifest injustice resulting
19 from application of the adjustment for year-end conformance. When the
20 adjustment for year-end conformance of the base year is waived, in
21 whole or part, for a facility under this subsection, the amount waived
22 may not be included as part of the base upon which the prospective
23 rate is determined if the nonconformity affects both costs and
24 charges. When the adjustment for year-end conformance of the base
25 year is waived, in whole or part, for a facility under this subsec-
26 tion, the amount waived shall be included as part of the base upon
27 which the prospective rate is determined if the nonconformity affects
28 only charges.

29 * Sec. 2. TRANSITIONAL PROVISION. (a) For the services provided on or

1 after January 1, 1989, an approved prospective payment rate determined for
2 a facility for fiscal year 1989, based on a conformance review of that
3 facility's rate for fiscal year 1987 shall be recalculated as if the pro-
4 visions of AS 47.07.070(e), as enacted by sec. 1 of this Act, were in
5 effect at the time of the determination of the prospective payment rate in
6 effect for the period. If the application of this section results in a
7 higher prospective payment rate for a health facility than that which had
8 previously been calculated for the facility, the difference shall be
9 promptly remitted to the health facility. If the application of this
10 section results in a lower prospective payment rate for a health facility
11 for fiscal year 1989 than had previously been calculated for the facility,
12 this section may not be applied to decrease a rate to a facility for fiscal
13 year 1989 for any part of year-end conformance waived.

14 (b) In this section, "conformance review" means the review undertaken
15 after the end of the year for which a facility's approved rate has been set
16 to determine whether actual payments made to a health facility under AS 47.
17 07 and AS 47.25.120 - 47.25.300 conformed to the payment rate approved for
18 that health facility under AS 47.07 and to determine whether the prospec-
19 tive payment rate for that facility should be adjusted for the next rate-
20 setting year.

21 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

MEMBER
TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

FEB 02 1989

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 485-3822
P. O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7812

February 2, 1989

MEMORANDUM

To: Senator Fischer, Chairman
HESS Committee

From: Senator Kelly **TOK**

Re: Introducing a committee bill to correct a problem with health facility medical rate reimbursement.

I have attached a draft of legislation that would correct a problem inadvertently caused by a Medical Rate Commission action this last summer. In this action the commission repealed one of their own regulations that had a dramatic and unanticipated effect on certain health facilities year-end conformance determinations. I have talked with Commissioner Munson and everyone is in agreement that it was an unfortunate slip up. Last week the commission re-established the particular regulation.

The problem is that there appears to be no way for the commission itself to make this regulation retroactive, causing a disparate rate setting for those facilities whose conformance determination happened to occur in the time interval of the regulation's repeal. Humana hospital is particularly affected.

The proposed draft seems to be the only avenue for redress. It essentially puts the regulation language into law and retroactively applies the law. I have tried to make the title as tight as possible so that the bill does not attract other considerations. I would appreciate your consideration to introduce the bill as a committee bill.

Rec'd 3/16/89
After bill
R/O

REVISED ADDENDUM TO FISCAL NOTE ON CSSB 166

Although Sitka General Hospital has also been identified as a facility which could have year end conformance waived under SB 166, the financial impact to the Department of Health and Social Services from this waiver will not significantly impact the FY 89 budget.

Other facilities may be eligible to have year end conformance waived in accordance with SB 166, however, these facilities have not contacted either the Medicaid Rate Commission or the Department of Health and Social Services requesting such a waiver. Consequently, the potential financial impact from these facilities seeking a waiver has not been included in the fiscal note. If waiver is extended to the other possibly eligible facilities, the maximum anticipated fiscal impact in FY 89 would be \$250.0 total funds, \$125.0 general fund match and \$125.0 federal funds.

Approved: Myra J. Munson
Myra J. Munson, Commissioner
Department of Health
and Social Services

Dated: March 15, 1989

RECEIVED
MAR 15 1989
LEGISLATIVE FINANCE

Rec'd 3/10/89
After bill
R/D
Outdated

ADDENDUM TO FISCAL NOTE ON CSSB 166

Although Sitka General Hospital has also been identified as a facility which could have year end conformance waived under SB 166, the financial impact to the Department of Health and Social Services from this waiver will not significantly impact the FY 89 budget.

Other facilities may be eligible to have year end conformance waived in accordance with SB 166, however, these facilities have not contacted either the Medicaid Rate Commission or the Department of Health and Social Services requesting such a waiver. Consequently, the potential financial impact from these facilities seeking a waiver has not been included in the fiscal note.

Approved: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health
and Social Services

Dated: March 14, 1989

RECEIVED
MAR 15 1989

LEGISLATIVE FINANCE

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

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JUNEAU, ALASKA 99811
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P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

Re: SB 166

February 2, 1989

MEMORANDUM

To: Senator Fischer, Chairman
HESS Committee

From: Senator Kelly *TK*

Re: Introducing a committee bill to correct a problem with health facility medical rate reimbursement.

I have attached a draft of legislation that would correct a problem inadvertently caused by a Medical Rate Commission action this last summer. In this action the commission repealed one of their own regulations that had a dramatic and unanticipated effect on certain health facilities year-end conformance determinations. I have talked with Commissioner Munson and everyone is in agreement that it was an unfortunate slip up. Last week the commission re-established the particular regulation (see attached regulation sequence A, B, and C).

The problem is that there appears to be no way for the commission itself to make this regulation retroactive, causing a disparate rate setting for those facilities whose conformance determination happened to occur in the time interval of the regulation's repeal. Humana hospital is particularly affected.

The proposed draft seems to be the only avenue for redress. It essentially puts the regulation language into law and retroactively applies the law. I have tried to make the title as tight as possible so that the bill does not attract other considerations. I would appreciate your consideration to introduce the bill as a committee bill.

BACKGROUND MATERIAL PROVIDED BY SENATOR KELLY

STATE OF ALASKA
STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

January 25, 1989

Medicaid Rate Commission
P.O. Box 240249
3601 "C" Street, Suite 592
Anchorage, Alaska 99524-0249

Re: Year end conformance waiver
regulation proposal

Dear Commission Members:

The Department of Health and Social Services offers the following comments regarding proposed regulation (7 AAC 43.691(c)) to waive year-end conformance in rate-setting by the Medicaid Rate Commission. */ The department supports the commission having authority to waive year end conformance, provided the authority is subject to conditions. The department recognizes the need for commission flexibility to respond to unique circumstances. The department opposes unlimited authority to waive year end conformance in any case. In addition, unlimited authority will very likely produce additional work for the commission and its staff and the facilities, since the facilities will have no guidelines to suggest what petitions are likely to be accepted and which ones are not. Truly prospective rate setting and responsible budgeting by the commission, department and facilities cannot occur if every facility can petition the commission at year-end for additional funds to balance its books.

The department offers the following alternative language:

* Section 1. 7 AAC 43.691 is amended by adding a new subsection to read:

(e) The commission will, in its discretion, waive all or part of the year-end conformance, if the facility provides justification to the commission's satisfaction,

*/ The department's attorney has checked with the staff of the regulations attorney and was informed that new subsection letter must be used even though the same language (as was repealed) is being proposed.

that ~~immediate~~ ^{a illeaptable} and manifest injustice will result if year-end conformance is strictly applied. All or part of year-end conformance will, in the commission's discretion, only be waived if the commission finds that:

(1) the facility has taken effective measures to control costs in response to the situation upon which the waiver request is based; *and*

(2) the waiver request does not contradict a prior action of the commission as to an element of the facility's rate contained in 7 AAC 43.683, 7 AAC 43.685, and 7 AAC 43.686; and

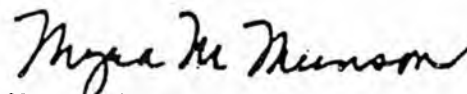
(3) the waiver request would result in payment for only allowed costs and services authorized by the division of medical assistance under state or federal laws or both if applicable, or regulations; and

(4) the situation upon which the waiver request is based results from the provision of direct patient care or from prudent management actions improving the financial viability of the facility, *To provide patient care.*

We urge the commission to adopt the department alternative language.

We appreciate the opportunity to offer comments on this important matter. Members of my staff will be available at the upcoming meeting to further elaborate on this position.

Sincerely yours,



Myra Munson
Commissioner

POSITION PAPER

SB 166

INTRODUCTION

The process by which Medicaid and GRM reimbursement rates are established for health facilities includes a procedure called year end conformance. This procedure compares the Medicaid Rate Commission (MRC) approved rate with actual rate billed by the facility during the billing period. If a defined level of variance between the approved and actual charges exists, an adjustment is made to the facility's base for its future prospective rate.

In August, 1988, the MRC repealed regulations that allowed waiver of the year end conformance adjustment. After realizing that in at least two cases the regulations had an unanticipated, negative effect, the MRC adopted a regulation which allows the commission to waive all or part of the year end conformance adjustment under certain circumstances. This regulation will become effective March 25, 1989.

This bill makes waiver authority retroactive to January, 1989. Due to federal Health Care Financing Agency requirements, federal participation in the state's Medicaid Program would be jeopardized if we change any provision of rate setting for a period prior to January 1.

ANALYSIS

Section 1 of the bill defines the procedure, provides for a full or partial waiver of the adjustment in cases of manifest injustice, and clarifies the treatment of some technical questions associated with implementation.

Section 2 of the bill requires reanalyzing rates in effect on or after January 1, 1989, in accordance with Sec. 1 of the bill, requires the immediate payment of an amount due the facility as the result of reanalyzing rates if waiver is granted, and prohibits recoupment by the state if reanalyzing rates in accordance with Sec. 1 results in an amount due the state.

Section 3 of the bill provides for an immediate effective date. To receive federal financial participation (FFP) for the period January 1, 1989 - March 31, 1989, the state Medicaid plan amendment must be submitted prior to March 31, 1989. Therefore, SB 166 would have to be enacted into law with sufficient time for the department to prepare and submit the state plan amendment. An effective date before March 31, 1989, is essential for the state to continue to meet the federal requirements of the Medicaid Program and grant this retroactive relief.

DISCUSSION

Health facilities will benefit from a possible waiver of the year end conformance procedure under situations of manifest injustice. Situations which have been brought to the attention of the MRC to date include at least two in which facilities can demonstrate that a prudent management decision such as a reasonable rate increase has triggered the application of the procedure, and where a series of patients requiring an extraordinary level of care has triggered the application of the procedure. Other facilities may also seek relief from the year end conformance requirement, but it is not known whether they will meet the conditions for waiver.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES' POSITION

The department neither opposes nor supports Senate Bill 166.

Recommended: Kim Busch
Kim Busch, Director
Division of Medical Assistance

Date: March 6, 1989

Approved: Myra M. Munson
Myra M. Munson, Commissioner
Department of Health and
Social Services

Date: March 6, 1989